United Nations S/2002/872

Security Council

Distr.: General
1 August 2002

Original: English

Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/455).

The Counter-Terrorism Committee has received the attached supplementary report from the Czech Republic, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

02-51377 (E) 270802

BEST COPY AVAILABLE

Annex

Note verbale dated 23 July 2002 from the Permanent Mission of the Czech Republic to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Czech Republic to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and has the honour to submit to it herein the replies of the Czech Republic to the supplementary questions of the Committee (see enclosure).

Enclosure

Replies of the Czech Republic to the supplementary questions of the Counter-Terrorism Committee*

Sub-paragraph 1(a)

Can the Czech Republic please indicate what legislative provisions and procedures exist for monitoring suspicious financial transactions? Are there any legal reporting obligations for financial institutions and other financial intermediaries, including those outside the mainstream (e.g. lawyers), that contribute to the prevention of economic and financial operations with terrorist or other criminal aims? What penalties apply to non-compliance with the legal obligations?

The basic means for protection against the abuse of the financial system and financial services by terrorists are Act No. 48/2000 Col., on Measures against the Afghan Taliban Movement and Act No. 98/2000 Col., on the Enactment of International Sanctions Aimed at the Maintenance of International Peace and Security. The sanctions regime set out according to these acts, which is associated with the resolutions of the UN Security Council, is binding for everyone.

According to Act No. 61/1996 Col., on Certain Measures against Money Laundering, financial institutions currently have the obligation to declare suspicious transactions, i.e. transactions carried out in circumstances giving rise to the suspicion of efforts at money laundering.

Financial institutions are taken not only to refer to banks but also to savings and credit societies, investment companies and investment funds, pension funds, entities entitled, according to special legal regulations, to trade with securities, the administrator of the securities market, insurance companies, the Securities Centre and other legal entities entitled to administer part of the records of the Securities Centre as well as the performance of its other activities, legal entities or individuals operating gambling rooms, casinos, betting offices, auctions apart from the execution of a judgement, property dealing, financial rental, financial activities, foreign currency trading, the brokering of cash and non-cash financial transfers, the brokering of savings or brokering activities aimed at concluding insurance or security agreements (Section 1 Paragraph 6).

The penalty for not fulfilling any of the obligations arising from Act No. 61/1996 Col., as subsequently amended, therefore including failure to notify a suspicious transaction, can reach a level of up to 2 million CZK (approx. 69 000 USD). A repeated breach during the course of twelve months can result in a fine of up to 10 million CZK (approx. 345 000 USD). If these obligations are repeatedly breached or breached in the long-term it is justification for forfeiture of the entitlement to undertake business or other independent means of employment and the Ministry of Finance has the obligation to initiate the appropriate proceedings.

In relation to the area of criminal law it is appropriate to state that criminal law is able to prosecute anyone (without regard to his profession) who does not provide notification of the committing (Section 168 of the Criminal Code) or who (including lawyers in this case) does not obstruct the committing (Section 167 of the Criminal Code) of the criminal acts specified in the law. In both cases the specified criminal acts include murder (Section 219 of the Criminal Code) as well as general menace according to Section 179 of the Criminal Code, endangerment of the safety of the means of air transport and civil craft (Section 180a

---

* The annexes are on file with the Secretariat and are available for consultation.

Paragraph 2 of the Criminal Code), the forcing of a means of air transport to a foreign destination (Section 180c of the Criminal Code) and naturally also the crime of terrorism according to sections 93 and 93a of the Criminal Code.

Sub-paragraph 1(b)

In the reply to sub-paragraph 2(e) the report states that the establishment of the crime of financing terrorism is being considered within the framework of the re-codification of the criminal law. Please provide a progress report on the legislative amendments.

By means of Resolution No. 319 of the April 9, 2001 the Government committed itself to the submission of a paragraphed wording of the new Criminal Code by December 31, 2002. One of the objectives of the new Criminal Code is the creation of the most suitable system of protection for society and individuals against criminality and its new forms. The new act will ensure fulfilment of all obligations in the area of criminal law that arise for the Czech Republic from international agreements and other documents and the obligations stated in the International Convention on the Suppression of the Financing of Terrorism are explicitly stated in the government approved legislative intention of the new Criminal Code. The specific wording of the new Criminal Code as well as the method for the implementation of this convention are, however, subject to approval by the Government and, in particular, the Parliament of the Czech Republic.

In the spring of this year the Parliament of the Czech Republic approved an amendment to the Criminal Code by means of Act No. 134/2002 Col., which contains amended provisions specially designated for prosecution in relation to the money laundering (Section 252a of the Criminal Code). Within its framework is a change to the definition of criminal conspiracy in Section 89, Paragraph 17 so that it is in accordance not only with the requirements arising from the Convention on the Suppression of the Financing of Terrorism but also with the definition of this term in the Joint Measures adopted by the Council of the European Union on the basis of Article 3 of the Treaty on European Union, with the statement that involvement in a criminal organisation is, in the countries of the European Union (EU), a crime.

Sub-paragraph 1(c)

Please explain if the provisions of the Act No 61/1996 Col., on Various Measures against Money Laundering relating to the service of a suspension order can be applied in respect of financial transactions related to, or suspected of being related to terrorism. Please outline the relevant provisions of this Act.

See Annex 1: Section 6 Act No 61/1996 Col.

Advancement in this issue should be brought by the euro-amendment of Act No. 61/1996 Col., the draft of which is to be submitted to the Government by the Ministry of Finance by the end of 2002, on the basis of Government Resolution No. 385 of April 10, 2002.

The provisions on the suspension of the execution of an order from a client can be applied to a transaction associated with terrorism after the stated amendment has taken effect. At the moment it only concerns transactions that may be connected with money laundering, consequently also transactions that have the objective of legalising the revenues from criminal activity with the objective of financing terrorism. After the introduction of the amendment the instrument of suspending a client order will also relate to the financing of terrorism from legally acquired funds. The suspension of a client order (freezing of funds) is only possible for a total period of 72 hours. This period serves the specific purpose of allowing the Financial Analysis Department sufficient time to investigate the transaction in question and make a qualified decision as to whether there exists suspicion of committing of a crime. If the answer is yes then it submits a criminal notification to police bodies.

If criminal notification is submitted then the transaction is suspended for three further days so the police bodies can decide on a further procedure and this is no longer within the competence of the Financial Analysis Department. It is anticipated that this procedure will not be changed as a result of the amendment.

Is it possible on basis of the legislation mentioned in reply to this sub-paragraph to freeze funds and other financial assets held in financial institutions in the Czech Republic that belong to terrorists (or suspected terrorists) residing outside the Czech Republic, on request of another country?

With regards to the possibility to freeze the funds of terrorists on the basis of the request of another country it can be stated that the instrument of suspending the execution of a client's order will be applicable also against terrorists after the amendment of the Act No. 61/1996 Col., under the same conditions and terms as stated in the previous paragraph (also in case of legally acquired financial funds used to finance terrorism).

In this context it is necessary to state again that the standard freezing of funds relating to terrorism is covered by Act No. 48/2000 Col. and No. 98/2000 Col. The sanctions for the breaching of these two acts are within the competence of several departments including the Ministry of Finance (this relates to Section 8 of both acts).

Within the framework of criminal proceedings an approach according to Sections 79a and 79b of the Criminal Code is possible – the freezing of funds in a bank account (or other entities such as a savings or credit society or other entity that administers an account for someone else) or according to Section 79c of the Criminal Code – the freezing of registered securities. Also according to Section 384 Paragraph 2 of the Criminal Code on the basis of the request of another country a court, at the motion of a state prosecutor, can decide on a provisional securing of property or its confiscation under the conditions given in the international agreement by which the Czech Republic is bound. The district court in whose area the property that is the subject of a motion is found is the appropriate court for ruling on such a motion.

Sub-paragraph 1(d)

According to the report, the Czech Republic has no specific legal provisions to give effect to the requirements of this sub-paragraph. In view of the proposed ratification of the International Convention for the Suppression of the Financing of Terrorism, what legislative provisions does the Czech Republic propose to take to give effect to the provisions of the Convention in its domestic law?

See the explanation to Sub-paragraph 1(b). The current legal arrangement already sets out the criminal responsibility of a participant to a criminal act (i.e. the organiser, the abettor and accomplice including a person providing the means to commit a criminal offence), and it is the same as for the person actually committing the crime (Section 10 of the Criminal Code).

In connection with the prosecution of the financing of terrorist activities it is possible to mention, in particular, the amendment in preparation of the Act No. 61/1996 Col., on Various Measures against Money Laundering. Clearly relevant measures are also provided by the Criminal Code (e.g. Articles 79a, 79b, 79c) and the sanctions legislation (Act No. 48/2000 Col., on Measures in Relation to the Afghan Taiwan Movement, Act No. 98/2000 Col., on the Implementation of International Sanctions for Maintaining International Peace and Security).

Please explain how the provisions of the Civil Code and Commercial Code contribute to compliance with this sub-paragraph.

With regards to the Civil Code and the Commercial Code these regulations do not contain separate material law provisions in relation to sub-paragraph 1(d) of the resolution. Applying throughout the whole civil law, however, is the principle formulated in Section 39 of the Civil Code, according to which a legal act becomes invalid if its content or purpose contradicts or circumvents the law or contravenes good practice.

Possible abuse of the civil law arrangement in relation, for example, to deposit agreements according to the Civil Code or agreements on a current or deposit account according to the Commercial Code, in favour of terrorism is otherwise fully subject to measures according to the criminal law.

In the area of civil law it was stated in the amendment to the Banking Act No. 126/2002 Col. that all deposit relations confirmed by deposit books in favour of the bearer will be cancelled by December 31, 2002. This will end the existence of these anonymous deposits from the law by the stated date and thus prevent their possible misuse pursuant to sub-paragraphs 1(a) and 1(d) of the UN Resolution.

What legal measures are available to prevent the use of funds held in financial institutions in the Czech Republic by non-residing persons and entities to support terrorist acts outside the Czech Republic?

See the explanation to sub-paragraphs 1(b) and 1(d).

Does the Czech Republic have any provisions for regulating alternative money transfer agencies? Please outline these provisions.

Cash and non-cash transfer agencies (such as Western Union) are in the Czech Republic licenced by the Czech National Bank and according to Act No. 61/1996 Col., which in this case is fully applicable, have the obligation to report suspicious transactions. No other entities without the Czech National Bank licence (such as Hawala, Hundi) are not allowed to provide their services on the territory of the Czech Republic.

What preventive controls and surveillance measures has the Czech Republic put in place to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted from their stated purposes?

In case of a suspicion of money laundering in relation to a charitable, religious or cultural organisation it is also possible to use the control mechanism for financial institutions according to Act No. 61/1996 Col. At the current time an amendment is being prepared to Act No. 61/1996 Col., on Certain Measures against Money Laundering, which with effect from the middle of next year will permit similar action in relation to suspicious transactions connected with terrorism but which are not the result of money laundering.

The Ministry of Culture is entitled to examine matters relating to an application to register a charitable, religious or cultural organisation. If required (before registration and also in the event of the suspicion of a breach of the legal order or the stating of incorrect information etc.) the Ministry of Culture can request the opinion of the Ministry of the Interior and security services or other bodies of the state

administration. On the basis of its findings the Ministry of Culture can commence registration[1] cancellation proceedings.

Sub-paragraph 2(a)

Please explain whether the Criminal Code provides any specific measures to prohibit recruitment to terrorist groups.

The measures applied in this case are the legal standards forming the constitutional order of the Czech Republic, including the implementation of the international agreements by which the Czech Republic is bound.

Other measures concerning the ban on providing any form of active or passive support to entities or individuals participating in terrorist activities, including the suppression of the recruitment of members for terrorist groups and preventing the supply of arms to terrorists, are contained in Act No. 48/2000 Col., on Measures in Relation to the Afghan Taliban Movement in the wording of the implementing regulations and in Act No. 98/2000 Col., on the Implementation of International Sanctions for the Maintenance of International Peace and Security.

The Criminal Code contains provisions for the prosecution of an organised criminal act, incitement to a criminal act and assistance in the committing of a crime, including the provision of means (Section 10 of the Criminal Code), actual participation in a criminal conspiracy including its support (Section 163a of the Criminal Code), the provision of encouragement for a criminal act (Section 164 of the Criminal Code) etc. An attempt at a crime is a crime and in relation to serious crimes (among which are the majority of crimes in the original Report) preparation alone is considered a crime.

Please outline the relevant provisions of Act No 288/1995 Col., on Arms and Ammunition.

See Annex 2: Act No 288/1995 Col., on Arms and Ammunition.

With regards to the translation capacity it is not possible to provide an official translation of the stated act. With the aim of preserving the authenticity of the text the act is provided in its original wording.

Please provide information on the measures available to safeguard against the misuse of, and illicit trade in, explosives produced in the territory of the Czech Republic.

Control activities in this area are within the competence of the Czech Mining Authority and the Ministry of Industry and Trade respectively (Act 61/1988 Col.).

In this context the Police Force of the Czech Republic pursues its tasks in the matters of interior order and security and other tasks in the scope and manner according to national regulation.

The ban of the supply of weapons to terrorists is set out in our criminal law by the following crimes:

[1] According to § 22 paragraph 1 letter c) of Act No. 3/2002 Col., on Churches and Religious Societies, the Ministry of Culture commences proceedings on the cancellation of registration of a church and religious society or proceedings on the cancellation of registration of an association of churches and religious societies, if the registered church and religious society or association of churches and religious societies advance, despite a challenge to eliminate illegal activities, an activity that is in contravention of the legal order.

- § 124d Breaching the regulations on the foreign trade in military material – foreign, trade without permission or a license.

- § 124e Breaching the regulations on the foreign trade in military material – unauthorized issuing of permission or license to pursue international trade in military material.

- § 124f Breaching the regulations on the foreign trade in military material – suppression of facts important for issuing permission or license.

- § 185 Unauthorized arming

- § 185a The development, production and holding of banned military equipment.

- § 186 The unauthorized production and possession of radioactive material and highly dangerous substances.

- § 187 The unauthorized production and possession of intoxicating and psychotropic substances and poisons

- § 188 The production, procurement or receiving of material for the unauthorized production and possession of intoxicating and psychotropic substances and poisons.

Other measures concerning the ban on the provision of any form of active or passive support to entities or individuals participating in terrorist activities, including the suppression of the recruitment of members to terrorist groups and the prevention of the supplies of arms for terrorists are contained in Act No. 48/2000 Col., on Measures in Relation to the Afghan Taliban Movement in the wording of the implementation regulations and Act No. 98/2000 Col., on the Implementation of International Sanctions for the Maintenance of International Peace and Security (e.g. measures concerning trade and services, transport and routes, technical infrastructures, science and technology, cultural and sporting contacts).

Sub-paragraph 2(b)

Please provide information on the mechanism for interagency co-operation for a unified approach in implementing this sub-paragraph amongst the authorities responsible for narcotics control, financing tracking and security, in particular in regard to border control.

The international co-operation of the Czech Police Force in the area of the fight against terrorism takes place mainly on the European continent. Outside the European continent the Czech Police also co-operates in particular with the USA, Israel, Canada and Japan.

The international co-operation of the central bodies of the Czech Republic and the appropriate security and intelligence units is a reflection of the obligations arising from the international treaties by which the Czech Republic is bound (including the Treaty on Legal Assistance) and from the agreements concluded between individual intelligence and security entities.

In these cases an important role is played by the Department of International Police Co-operation of the Police Presidium (OMPS), which was established in 1999 and reports directly to the Chief Constable.

The objective of establishing the OMPS was to create the effective organisational prerequisites for the systematic combating of crime committed on an international level and the integration of the activities of

the Czech Police with regards to the preparations of the Czech Republic for accession to the EU. This relates in particular to the issues of:

- the co-operation of the Czech Police with international organisations, police institutions and the security units of other countries, with the exception of certain specific tasks that were entrusted directly to the Ministry of the Interior or other departments,
- the sending of police experts to discussions connected with the accession of the Czech Republic to the European Union,
- organisational and methodology preparations for the incorporation of the police in international co-operation within the framework of the European security structures (EUROPOL, Schengen information system) and the implementation of legal documents associated with the activities of these institutions,
- the selection, preparation and co-ordination of activities of liaison officers and other police officers sent or assigned to undertake duties abroad – and alternatively co-operation within the framework of the network of liaison officers of foreign countries assigned to secure police co-operation in the Czech Republic,
- the preparation and debate of international agreements,
- co-operation of the police departments and investigation departments with relevant foreign partners,
- the processing of information on international criminal activity,
- the management and operation of an information system for the detection of international criminal activity,
- updating and utilising the designated international database,
- the announcing, monitoring and cancelling of nation-wide investigations at the request of judicial bodies of foreign countries,
- the performance of extradition including participation in escorting,

The above mentioned tasks within the framework of the OMPS are carried out by five separate groups: the National Centre of INTERPOL, the Foreign Relations Group, the Organisation and Methodology Group, the "EUROPOL" Group and the "Sirene" Group.

Along with this within the framework of the Ministry of the Interior work is continuing on the creation of the EURODAC CR workplace, affiliated to the already established and further developing information system AFIS. This system is used by the Czech Police for the purposes of criminal proceedings and the controls of legal and illegal migration. Its standard software product fulfils the compatibility requirement with the system currently used in the EU countries.

The Czech Republic is also working on the gradual fulfilment of the individual principles of the Pre-accession Pact between the EU member states and the candidate countries on the fight against organised crime, which was approved in 1998.

Of legislative significance in the area of police co-operation and the fight against organised crime is the amendment to the Act on the Czech Police (Act No. 60/2001 Col.), which is and important step on the way to establishing a system comparable to the systems of the EU member states. Full compatibility was achieved between Czech police law and EC/EU law by the Act amendment, which came into effect on the February 19, 2001 and prepared the conditions for co-operation with EUROPOL. Among other things the amendment:

- has led to the creation of a unified Criminal & Investigation Police Service,
- harmonised Czech police law with European police legislation (e.g. the institute of cross border monitoring and pursuit),
- permitted the operation of members of foreign police services on Czech territory and members of the Czech Police Force on the territory of other countries under the conditions set out by international agreement,
- regulated the issue of the treatment of personal data processed by the police,

Please explain how the Czech Republic provides early warning to countries other than the Member states of the EU.

The provision of prompt warning to other than the EU member countries occurs along the INTERPOL channels. Over 12 months (April 2001 to April 2002) a total of 60,362 pieces of information were mutually exchanged (of this 51% was with countries that are not EU members). In around 90% of cases at issue are unsolicited information initiatives, distributed on initiation of sender. A total of 85 reports concerned the issues of terrorism (the issue of financing terrorism is not separately monitored). According to the Binding Instruction of the Chief Constable No. 56/7 the bodies of the Czech Police must be able, according to the degree of urgency, to respond in urgent cases within 2 or 6 hours respectively.

The legal arrangement provides the possibility for the transmission of information gained during the supervision of financial institutions to other entities with which the Czech Republic has an agreement on the exchange of information on the basis of international agreements with which Parliament has expressed its approval and by which the Czech Republic is bound and was announced in the Collection of International Agreements.

- intelligence services (§ 9 of 153/1994 Col. on the basis of agreements with the approval of the government)

- police (§ 1 paragraph 3 of. No. 283/1991 Col., bilateral agreements)

- financial institutions (§ 2 paragraph 3 of 6/1993 Col.)

- information obligations towards the bodies of the EU and the UN

- international treaties

For the purpose of fulfilling these tasks arising from Resolution No. 1373 (2001) close co-operation is taking place between bodies active in criminal proceedings and the Ministry of Finance, the General Customs Directorate, the intelligence services and the Czech National Bank.

Sub-paragraph 2(d)

Please indicate how the Czech Republic prevents its territory from being used for terrorist acts committed outside its territory.

This obligation for the Czech Republic arises from the international agreements implemented in the Czech legal order (obligations that are directed at the elimination of the illegal state caused by a terrorist act and the elimination of the consequences associated with it, obligations for the prosecution of the offender, obligations in the area of prevention, obligations in the area of the exchange of information and the co-operation of parties to the agreements):

- criminal law (the definition of crimes falling under the definition of a terrorist act, the principle of territoriality, the principle of protection, the principle of universality embedded in the criminal law of the Czech Republic, extradition and the assumption of criminal prosecution),

- multilateral and bilateral agreements on extradition and legal assistance and the extradition provisions of multilateral treaties, bilateral agreements on international police co-operation,

Please provide a list of countries with which the Czech Republic has concluded bilateral treaties on extradition as well as on legal and police co-operation, as referred to in reply to this sub-paragraph.

List of countries with which the Czech Republic has concluded appropriate bilateral treaties: Afghanistan, Algeria, Belarus, Bosnia and Herzegovina, Bulgaria, Estonia, Croatia, India, Italy, Yemen, South Africa, Yugoslavia, Canada, Kenya, the Peoples Democratic Republic of Korea, Cuba, Lithuania, Latvia, Hungary, Macedonia, Monaco, Mongolia, Germany, New Zealand, Austria, Rumania, Slovakia, Slovenia, the United States, Swaziland, Syria, Tunisia, Uganda, Vietnam.

Sub-paragraph 2(e)

Please elaborate on the new arrangement of crimes and the stricter punishments for the most serious crimes that is being considered within the framework of re-codification of the criminal law. When will the re-codification take place?

The punishments stated for the serious crimes associated with terrorism, according to our information, corresponds to the punishment tariffs of similar provisions in countries with a comparable criminal law system. Within the framework of the re-codification of criminal law it is intended to increase the punishment tariffs in relation to the most serious crimes, to establish the crime of financing terrorism (including the criminal responsibility of legal entities) and newly arrange criminal acts.

By means of Government Resolution No. 319 of April 9, 2001 the legislative intention of the new Criminal Code was approved, in which the Government decided on the establishment of criminal responsibility for legal entities. At the same time there will be a revision of the definitions of crimes given in the special part of the Criminal Code. The paragraph wording of the Criminal Code should be submitted to the Government for approval by the end of 2002.

Sub-paragraph 3(e)

Have all the offences set forth in the international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which the Czech Republic is party?

Yes. On the basis of the relevant international agreements against terrorism stated in them are the criminal acts considered as crimes subject to extradition within the framework of international extradition treaties. Consequently the option of signing the Convention for the Suppression of Illegal Acts against the Safety of Marine Navigation and the Protocol for the Suppression of Illegal Acts against the Safety of Fixed Platforms Located on the Continental Shelf is currently being considered, though these two stated documents concern the Czech Republic rather marginally as the Czech Republic is an inland country (see below).

The Czech Republic can of course also carry out an extradition in cases where it is not possible to use any international agreement on the basis of internal legislation (§ 379 and subsequent of the Criminal Procedure Code), providing the following conditions, in particular, are fulfilled: at issue is a crime according to the law of both states and a crime for which extradition is permissible and whose liability for punishment has not expired and providing that the person in question is not a citizen of the Czech Republic – see point 3(g).

In view of the requirement of this sub-paragraph for all member states to become party as soon as possible to the relevant international conventions and protocols relating to terrorism, what are the Czech Republic's intentions in relation to the Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

With regards to the fact that the Czech Republic is a land-locked country and the impact of the subject of the convention falls outside the activities conducted by the Czech Republic an evaluation is taking place on the importance of the entry of the Czech Republic to the Convention for the Suppression of Illegal Acts against the Safety of Marine Navigation and the Protocol for the Suppression of Illegal Acts against the Safety of Fixed Platforms Located on the Continental Shelf. In the event of a positive outcome to this evaluation the preparation of a proposal for ratification or accession to these conventions for interdepartmental discussion will be considered.

Sub-paragraph 3(f)

Please elaborate on the measures taken to ensure compliance with this sub-paragraph.

The given issues are covered, in particular, by the Convention on the Legal Status of Refugees from 1951, Act No. 325/1999 Col., on Asylum and on the amendment of Act No. 283/1991 Col., on the Czech Police as subsequently amended (the Asylum Act) and Act No. 326/1999 Col., on the Stay of Foreigners on the Territory of the Czech Republic in the wording of later regulations.

The administrative body of the Ministry of the Interior that decides in asylum proceedings of the granting or refusing of asylum, carefully and individually examines the reasons and circumstances of each application. To a greater degree it concerns applicants to who the text of this Resolution could potentially be applied. When deciding the Ministry of the Interior co-operates with the appropriate bodies and services that can make further information available necessary for objective judgement.

According to the provisions of § 71 Paragraph 2 of the Asylum Act the police and intelligence services of the Czech Republic are entitled, when fulfilling tasks according to the Asylum Act and special legal regulations, to access records and use the data therein contained, including personal data. This allows the security forces to identify these individuals. Also determined in this context is whether the applicant in question has, according to information of the Czech Republic, participated in terrorist activity. An important role is also played here by foreign documentation, for example the lists, associated with the Common Approach of the Council of the EU of December 27, 2001 on the Use of Special Measures for the Fight Against Terrorism (2001/931/CFSP).

The Act on the Stay of Foreigners No. 326/1999 Col. states the conditions for the entry of a foreigner onto the territory of the Czech Republic, his/her stay and departure and defines the authority of bodies of the state administration in this area.

The act sets out the conditions for the refusal of entry (e.g. for the reason that a foreigner is persona non grata, has an invalid travel document or a travel document containing false information or unauthorized changes, the foreigner gives false information regarding the reason for the stay or it can justifiably be assumed that the foreigner intends to undertake unauthorized employment on the territory, there are grounds for believing that the foreigner may during his/her stay threaten the security of the state, create a serious disturbance to public order or frustrate the performance of judicial or administrative judgements, that by allowing entry of a foreigner an obligation would be breached according to international agreements etc.).

The act also sets out the conditions for entry onto Czech territory for the purpose of providing temporary protection. Foreigners who request the provision of temporary protection will be refused entry by the police if they have committed a crime against peace, a war crime, a crime against humanity as defined by international legal documents in which are stated measures for the cases of such crimes or a non-political crime that corresponds to a crime with the upper punishment tariff exceeding 10 years imprisonment prior to entering the territory. The police will also refuse entry to a foreigner requesting temporary protection entry if it is not possible to include him/her among the groups of foreigners for whom temporary protection has been declared, if facts have been determined that testify to the individual being a threat to the security of the state, in particular with regards to the fact that he/she has used force to promote political objectives or if by his/her actions he would pose a threat to the foundations of the democratic state or if he/she is recorded in the record of those persona non grata for the reason of a legal decision of a court on the punishment of deportation.

Persona non grata is taken to mean a foreigner who cannot be granted entry for the reason that his/her presence in the country could threaten the security of the state, public order, the protection of public health or the protection of the rights and freedoms of others or a similar interest protected on the basis of an obligation arising from an international agreement. (The police decide on the designation of a foreigner as persona non grata on the basis of their own knowledge, at the request of the a central administrative body of the Czech Republic, at the request of the intelligence services of the Czech Republic or an obligation arising from an international agreement). The police designate a foreigner as persona non grata on the basis of

a) a court judgement on the punishment of deportation from the country, or

b) a legal judgement on administrative deportation.

A foreigner designated as persona non grata is recorded in the list of those persona non grata.

According to Act No. 498/1990 Col., on Refugees as subsequently amended, a foreigner is classed as a refugee who in the state of his/her citizenship has the justified fear of persecution on the grounds of race, religion, nationality, membership of a specific social group or for political conviction. The status of refugee can also be assumed by the spouse and underage children of a foreigner granted refugee status according to Section 2 paragraph 1, even though they themselves do not fulfil the conditions therein stated.

With regards to asylum proceedings it is important to state that, apart from the stated carefully examined reasons and circumstances or each asylum application and co-operation with the appropriate bodies and services that monitor the given issue, both the Convention on the Legal Status of Refugees (Article f) and the Asylum Act (Section 15 – reasons for not granting asylum) take into account the given issue. It is specifically stated that it is not possible to grant asylum even if the conditions for its granting are fulfilled, if grounds exist to suspect that the foreigner who submitted the application for the commencement of asylum proceedings a) committed a crime against peace, a war crime or a crime against humanity according to the

international documents containing provisions on these crimes, b) committed a serious non-political crime outside the country prior to submitting the application for the commencement of asylum proceedings or c) is guilty of acts that are in contravention of the principles and aims of the United Nations.

The status of refugee is not applicable to a foreigner who:

a) committed a crime against peace, humanity or a war crime,

b) committed another especially serious intentional crime,

c) committed acts that are in gross breach of the objectives and principles of the United Nations as well as of the objectives and principles of international agreements by which the Czech Republic is bound.

The law states cases where the status of refugee will be or can be withdrawn (e.g. the refugee commits a premeditated crime or repeatedly and intentionally threatens public order, the decision to grant refugee status was made on the basis of inaccurate or incomplete information etc.).

The asylum applicant or refugee cannot be handed over or returned to a country where his/her life or freedom would be threatened on the grounds of his race, religion, nationality, membership to a specific social group or for political convictions. This does not relate to cases where the refugee threatens the security of the state or was convicted of a serious premeditated crime. In such a case it is possible to permit the foreigner to gain admission to another country.

From 1990 (to the end of October of last year) a total of 49,195 asylum requests were submitted (in 2000: 8,788 requests). Of these asylum was granted to 2,109 individuals (in 2000: 133 individuals).

Preparation work has also been commenced to secure the application of the Convention on the Designation of States Appropriate for the Assessment of an Asylum Application Submitted in Certain of the Member States of the EC of 1990 (the so-called Dublin Convention) and Council Regulation No. 2725/2000 on the establishment of the EURODAC for comparing finger prints for the purpose of the effective use of the Dublin Convention as a means for determining the identity of asylum applicants and individuals held in connection with the unlawful crossing of the outer borders of the EU among the individual EU member states.

Sub-paragraph 3(g)

Does the Czech Republic recognise claims of political motivation as grounds for refusing requests for the extradition of alleged terrorists?

This issue is in the Czech Republic governed by the specific provisions of bilateral or multilateral agreements. As a member of the Council of Europe the Czech Republic is a party to the European Treaty on Extradition from 1957 (Act No. 549/1992 Col.), setting out this issue in Article 3 and also the European Treaty of the Suppression of Terrorism from 1977.

Politically motivated behaviour that otherwise fulfils all the other characteristics of a crime is not, in the Czech Republic, considered as circumstances excluding illegality (these circumstances are only necessary defence, extreme emergency and the legitimate use of arms). Such behaviour is therefore punishable in the Czech Republic and by itself such circumstances do not prevent a court deciding on the permissibility of the extradition of an alleged terrorist.

If an alleged terrorist makes a claim of the political motivation of their behaviour that otherwise fulfils all the other characteristics of a crime, the Ministry of the Interior would, in assessing the merits of such a request, be bound by Article 43 of the Bill of Basic Rights and Freedoms, according to which asylum can be refused to anyone who has acted in contradiction with the basic human rights and freedoms and also Section 15 of the Asylum Act according to which reasons for refusing asylum include the committing of crimes against peace, war crimes or crimes against humanity as set out in the international documents containing provisions on these crimes or the committing of crimes that contravene the basic principles and aims of the United Nations – see the response to paragraph 3(f).

If an alleged terrorist makes the assertion that the criminal prosecution that he/she would be subject to, if extradited, has been initiated „for political reasons" the court will investigate the claim in its deliberations on the admissibility of extradition and only if they succeed in demonstrably substantiating the claim will they judge the extradition as inadmissible. The Minister of Justice is then unable to permit the extradition of such an alleged terrorist.

Does the Czech Republic have legislation on extradition? If so, please outline the relevant provisions of that legislation.

In the Czech Republic extradition is set out by the Criminal Procedure Code in Section II, heading twenty-five. The arrangement deals both with the standard extradition procedure and the so-called fast track extradition procedure. The noted international agreements, however, have precedence over this arrangement and it is therefore only used in the event that an international agreement does not state a different approach. In extradition proceedings the individual in question must have a legal representative who is entitled to participate in all acts and hearings concerning his client's case.

Extradition is therefore covered both by bilateral agreements on extradition and legal aid and by the extradition provisions of the individual multilateral international agreements. The Czech Republic as a party to the European Treaty on Extradition from 1957, which replaced the provisions of all the mutual two party agreements agreed among the European countries, concludes agreements only to supplement this treaty. According to the European Treaty extradition applies only to crimes that have a maximum punishment of at least a year in prison and a minimum of four months. In the legal order of the Czech Republic extradition is primarily set out in the Criminal Code and the Criminal Procedure Code that state the following basic requirements for extradition:

- in the event that a country does not extradite an alleged terrorist it is, according to international agreements, obliged, regardless as to whether the crime was committed in its territory or not, to submit the case to the appropriate bodies for the purposes of a criminal prosecution,

- the appropriate bodies are obliged to judge the case by the same method as in the case of any other serious crime,

- states cannot prosecute and punish an extradited individual for a crime other than the one for which he/she was extradited (the principle of speciality), unless subsequent approval has been granted for such a prosecution (Section 378 of the Criminal Procedure Code),

- if an individual has been extradited with a condition attached it is necessary to comply with this condition (Section 378 of the Criminal Procedure Code),

- the Czech Republic can also execute the judgement of a foreign country or request the extradition of an individual for punishment (Section 384a of the Criminal Procedure Code)

- The Czech Republic anticipates acceptance of the provisions of the European Warrant in the form in which it comes into validity (anticipated date: January 1, 2004).

For further details see Annex 4.

Paragraph 4

Has the Czech Republic addressed any of the concerns in paragraph 4 of the Resolution?

According available information there has not yet been a case, in the Czech Republic, of the freezing of funds in criminal proceedings concerning a terrorist act and its financing. Similarly there is no record that Act No. 61/1996 Col was followed with regards to any terrorist group. The Czech Republic received and dealt with a request for international legal assistance regarding the financing of terrorism.

On the territory of the Czech Republic in 2001 no crime of a terrorist nature was demonstrably determined and according to current information there are no terrorist groups active on the territory of the Czech Republic. Every year in the Czech Republic there are number of attacks committed with the aid of explosives against vehicles, buildings or individuals. In the majority of cases these relate to a settling of accounts, blackmail, intimidation and other manifestations of organised crime or individual revenge.

The extract from the database of explosions that were investigated by the Czech Police in 2001 contains a total of 25 cases. In connection with these 18 individuals were prosecuted or investigated, of which 4 were habitual criminals. Explosions with a terrorist subtext are not recorded separately, however in 2001 there were none on Czech territory. The recorded incidents related exclusively to intimidation, blackmail, the amateur production of explosive materials or the careless handling of them.

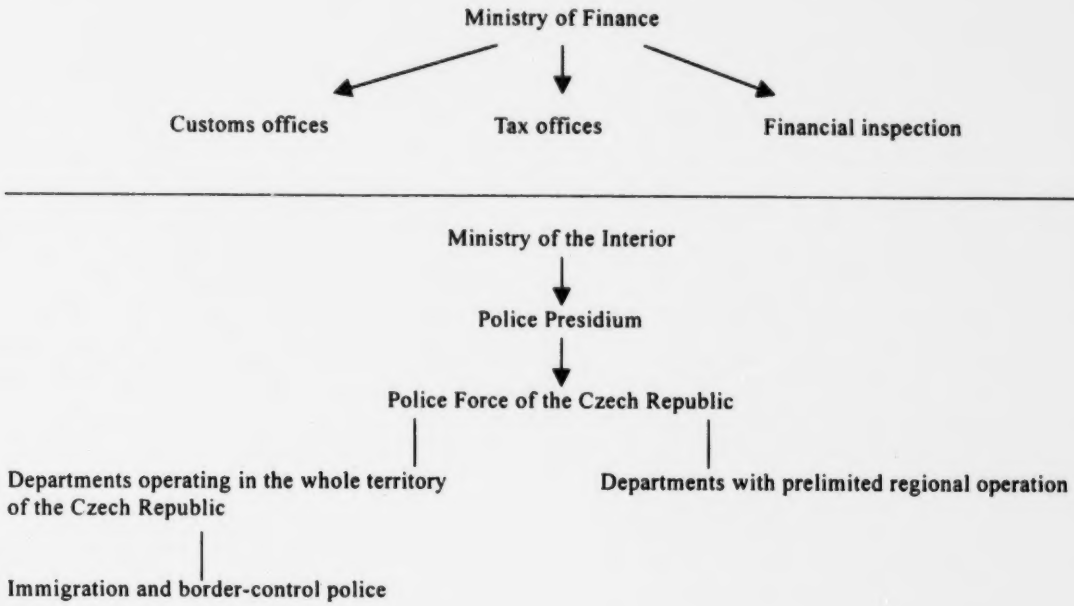
Other matters

Could the Czech Republic please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

It is not possible to prepare a simple chart of co-operation of the individual bodies of the state administration as the issue is very broad and mutual links differ according to the area in question (different links exist, for example, for bodies active in criminal proceedings, in the area of the public administration or in the area of terrorism etc.). In the area of terrorism, for example, the appropriate security and political departments of the Ministry of Foreign Affairs and the Ministry of the Interior co-operate with the Ministry of Justice, the Ministry of Industry and Trade, the Ministry of Defence, the Ministry of Finance, the Ministry for the Environment, the Ministry of Agriculture, the Ministry of Health, the Ministry of Education, the Ministry of Transport, the Ministry for Regional Development, the intelligence services, the Government Office, the State Authority for Nuclear Safety, the National Security Office, the Office for Public Information Systems and the Czech National Bank.

Appendix

Organizational chart of selected institutions


Ministry of Finance
Customs offices
Tax offices
Financial inspection
Ministry of the Interior
Police Presidium
Police Force of the Czech Republic
Departments operating in the whole territory of the Czech Republic
Departments with prelimited regional operation
Immigration and border-control police

United Nations S/2002/873

Security Council

Distr.: General
6 August 2002
English
Original: Arabic

Letter dated 5 August 2002 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you herewith a letter dated 5 August 2002 from Mr. Naji Sabri, Minister for Foreign Affairs of the Republic of Iraq, concerning the violations of the demilitarized zone that were committed by United States and British warplanes in the period from 29 June to 26 July 2002 and enclosing a table showing these violations.

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(*Signed*) Mohammed A. **Aldouri**
Permanent Representative

02-51065 (E) 070802 080802

Annex to the letter dated 5 August 2002 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

Further to our letter of 16 July 2002 (S/2002/804, annex), I should like to inform you that in the period from 29 June to 26 July 2002 United States and British warplanes flying from bases in Kuwait, from Kuwait's airspace and territorial waters and by way of the demilitarized zone monitored by the United Nations Iraq-Kuwait Observation Mission (UNIKOM) committed 712 hostile violations of our international boundaries. As shown in the table appended to this letter, the relevant Iraqi agencies have determined that the violations committed were as follows:

1. Armed aerial activity by the United States and the United Kingdom, violating our international boundaries from Kuwait, from Kuwait's airspace and territorial waters and by way of the demilitarized zone, comprised 712 armed sorties in the Dhi Qar, Muthanna, Basrah, Maysan, Qadisiyah, Karbala' and Najaf governorates.

2. Our technical systems identified the aircraft violating Iraq's airspace on a daily basis as American F-14s, F-15s and F-16s and British Tornadoes.

3. An AWACS aircraft operating inside Saudi airspace and an E-2C aircraft operating inside Kuwaiti airspace provided support to all of the United States and British aircraft that carried out armed and hostile sorties, violating Iraq's airspace by way of the demilitarized zone.

All of the violations in question were committed by way of the demilitarized zone in which UNIKOM is stationed. One of UNIKOM's primary responsibilities is to monitor such hostile military operations and to report them and endeavour to halt them immediately.

One of the primary tasks of UNIKOM is to record such violations accurately, determining the type and nationality of the aircraft. We therefore urge the United Nations Secretariat to provide UNIKOM with systems capable of detecting all of the violations so that it can notify the Security Council to take the necessary measures to halt these infringements forthwith. In another respect, even if UNIKOM did not have the systems needed to identify the type and nationality of these aircraft, the fact that they come from the direction of Kuwait confirms that they are those of the United States and the United Kingdom. Your report on UNIKOM for the period from 28 March to 4 September 2001 (S/2001/913) indicates as much, and paragraph 6 states that "[it should be noted] that the mission's inability to identify the States responsible for conducting such flights is in no way to be understood as condoning them". You also state in the report that the United States and the United Kingdom have acknowledged that they are continuing to enforce a no-flight zone in southern Iraq.

I accordingly urge you once more to instruct UNIKOM to perform its duties in full, to report these violations to the Security Council through you as soon as they occur and to specify the number and type of United States and British warplanes that violate the demilitarized zone, contravene the Security Council resolutions establishing the zone and commit aggression against Iraq, given that this constitutes State terrorism and wanton aggression against Iraq and against its people, its sovereignty and its territorial integrity, as well as against United Nations peacekeeping operations. I also ask you to alert the Security Council to its

responsibility to halt this aggression and ensure that its perpetrators are held fully accountable for it under international law and in accordance with the Security Council resolutions relating to Iraq.

(*Signed*) Naji **Sabri**
Minister for Foreign Affairs

Enclosure

Hostile aerial activity violating Iraq's international boundaries from Kuwait and by way of the demilitarized zone, 29 June-26 July 2002

Date	*From*	*Time*	*Type*	*Armed sorties*	*Altitude (metres)*	*Speed (km/h)*	*Areas overflown*
29 June-26 July	Kuwait	0045-2300	F-14, F-15, F-16	712	8,000-11,000	720-780	Basrah, Busayyah, Salman, Artawi, Lasaf, Qurnah, Ashbajah, Jalibah, Nasiriyah, Shatrah, Qal'at Salih, Amarah, Samawah, Karbala', Ukhaydir, Nu'maniyah, Najaf, Hayy, Talhah, Hashimiyah, Kut, Afak, Qal'at Sukkar, Diwaniyah, Rifa'i